IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 11390 of 2000
For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAJKUMAR COLLEGE

Versus

MANUBHAI KHODABHAI C/O BHARTIYA MAZDOOR SANGH

Appearance:
Mr.Gandhi for NANAVATI ASSOCIATES for Petitioner

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/11/2000

ORAL JUDGEMENT

1. By the present petition, the petitioner has challenged the order passed by the Appellate Authority under the Payment of Gratuity Act passed in Appeal No.44 of 1999. The mother of the respondent herein was serving with the present petitioner. She had put in about 30 years of service with the Institution. The respondent herein had applied for gratuity after the death of her mother, but since no amount of gratuity was given, he moved the Controlling Authority under the Payment of Gratuity Act, 1972 by way of Gratuity Case No.8 of 1997. The Controlling Authority allowed the said application and passed an order for Rs.39,180/- towards gratuity in favour of the present respondent herein. The aforesaid order was challenged by the present petitioner by way of appeal under the Payment of Gratuity Act, 1972, being

Appeal No.44 of 1999 and the said appeal was dismissed by the Appellate Authority and being aggrieved by the same, the petitioner-Institution filed the present Special Civil Application.

2. On appreciation of evidence, the original authority found that the mother of the respondent Nanubhai Khodabhai was serving as a Peon in the Institution and the aforesaid institution will also fall within the definition of `establishment', as the meaning of `establishment' cannot be restricted to "commercial establishment". The Tribunal has relied upon the judgment of the Supreme Court in State of Punjab v. Labour Court, Jullunder and others, reported in (1980) 1 SCC 4 and another decision of the Supreme Court reported in 1980 SSC-LNS-422 for coming to the said conclusion. The Authority under the Act found that the Gratuity Act is applicable and accordingly, passed an order for payment of gratuity to the tune of Rs.39,180/- in favour of the respondent herein. The Appellate Authority under the Act confirmed the said order.

3. I have heard Mr.Gandhi for the petitioner and I do not find any error in the reasonings given by the Original Authority while awarding the amount of gratuity in favour of the respondent. However, according to the petitioner, the Government had issued a Notification making the provisions of the Gratuity Act applicable to Educational Institutions, but that Notification had come into force in 1997 while the concerned employee had died in April, 1996 and, therefore, that Notification cannot retrospectively apply. However, the Authority under the Act has given cogent reasons and relying upon various Supreme Court judgments has come to the conclusion that the petitioner-Institution was an `establishment' under the Act. The concerned workman has served for 30 years in the establishment. The Original Authority has also considered the evidence of the witness, who was examined on behalf of the present petitioner-Institution, wherein the witness has said that the Institution is also running hostel, mess and also running a Bakery. After considering the evidence on record and ultimately considering various judgments as discussed by the Authority, the Authority passed an order of payment of gratuity in favour of the respondent, who is the heir of his deceased mother and the aforesaid order was confirmed by the Appellate Authority. Looking to the reasonings given by the original Authority, I do not find any substance in this petition.

4. Mr.Gandhi has relied upon the judgment of a

Division Bench of this Court in Charutar Vidya Mandal v. Shri Miranmiya Rehmumiya Malak and others, 1977 Lab.I.C. 1647. It has been observed in paragraph 9 of the said judgment as under :-

> "... Providing transport service to students so that they could without difficulty of having to waste their time in searching for some transport or other, was a very insignificant part in the scheme of the educational system of the petitioner, Vidya Mandal. It would be unreasonable to lend any industrial colour to his insignificant activity of the educational institution, the principal activity of which was imparting education. Admittedly it was run by donations received from the public and such other grants as may be made available to it by Government or other agencies. There was thus absence of commercial character in the service provided by the petitioner Vidya Mandal. The transport service was not an organized industry nor a "commercial undertaking" so as to come within the sweep or range of S.2(4) of the Act. As such an order by which the petitioner Vidya Mandal was directed to pay gratuity to the driver of the transport vehicle which was used for taking students from their lodgings to the several educational institutions under the petitioner's control was liable to be set aside .... "

It was, ultimately found by this Court that providing transport service was not an "organised industry" nor a "commercial undertaking". However, looking to the facts of the present case, the only argument which has been advanced by the petitioner is that it is an educational institution and, therefore, they are not liable to pay gratuity. In the case before the Division Bench, it was an admitted fact that it was run by donations received from the public and such other grants.

5. The Act has also defined `employee' as under :-

> "2. Definitions.- In this Act, unless the context otherwise requires.-
>
> ... ...

(e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity .... "

However, there is no separate definition of `establishment' in the Act. Therefore, looking to the reasonings given by the original Authority as well as looking to the fact that the Institution is also running hostel, Mess, and also a Bakery, it cannot be said that the Payment of Gratuity Act is not applicable so far as the present petitioner is concerned.

6. The Honourable Supreme Court in State of Punjab v. Labour Court, Jullunder and others, (1980) 1 SCC 4, held as under :-

"... But, it is contended, the law referred to under Section 1(3)(b) must be a law which relates to both shops and establishments, such as the Punjab Shops and Commercial Establishments Act, 1958. It is difficult to accept that contention because there is no warrant for so limiting the meaning of the expression "law" in Section 1(3)(b). The expression is comprehensive in its scope, and can mean a law in relation to shops as well as, separately, a law in relation to establishments, or a law in relation to shops and commercial establishments and a law in relation to non-commercial establishments. Had Section 1(3)(b) intended to refer to a single enactment, surely the appellant would have been able

> to point to such a statute, that is to say, a statute relating to shops and establishments, both commercial and non-commercial. The Punjab Shops and Commercial Establishments Act does not relate to all kinds of establishments. Besides shops, it relates to commercial establishments alone. Had the intention of Parliament been, when enacting Section 1(3)(b), to refer to a law relating to commercial establishments, it would not have left the expression "establishments' unqualified. We have carefully examined the various provisions of the Payment of Gratuity Act, and we are unable to discern any reason for giving the limited meaning to Section 1(3)(b) urged before us on behalf of the appellant. Section 1(3)(b) applies to every establishment within the meaning of any law for the time being in force in relation to establishments in a State. Such an establishment would include an industrial establishment within the meaning of Section 2(ii)(g) of the Payment of Wages Act. Accordingly, we are of opinion that the Payment of Gratuity Act applies to an establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on. The Hydel Upper Bari Doab Construction Project is such an establishment, and the Payment of Gratuity Act applies to it ...."

7. Mr.Gandhi has also relied upon the judgment of a learned Single Judge of this Court passed in Special Civil Application No.13265 of 1993 on 17th November, 1995. However, in the aforesaid case, ultimately, Management had paid the amount by settling the dispute with the concerned workman. The aforesaid judgment, therefore, cannot be treated as a precedent for deciding the issue in question.

8. In the facts and circumstances of the case,

therefore, it cannot be said that the Authority under the Act has committed any error in coming to the conclusion that so far as the present petitioner is concerned, the Payment of Gratuity Act is applicable to it. When the concerned workman, after service of 30 years, had died, and since her son, in spite of various demands, could not get the aforesaid amount from the Institution, as a last resort, he moved the Authority under the Act and the Authority had passed an award for Rs.39,180/-, which was the amount found to be payable to the mother of the respondent. Therefore, looking to the aforesaid facts and circumstances, as well as the order of the original Authority, I do not find any substance in the petition, which is filed under Articles 226 and 227 of the Constitution of India. Further, In the instant case, looking to the reasoning and especially the fact that there is already a Notification of the Government in this behalf, I would not like to exercise my jurisdiction under Article 226 of the Constitution of India. The petition is accordingly rejected.

8th November, 2000 (P.B. Majmudar, J.)

(apj) ********